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AVANT et al. v. COOK et al.

Nov. 11, 1915. Rehearing Denied Nov. 19, 1915.

[86 S. E. 903.]

1. Wills (§ 421*)—Probate—Collateral Attack.—Where a wife's will devising land to her husband was duly probated in 1887, ejectment by her heirs against the husband's devisees will not lie in 1914, on the ground that as a married woman she could not make a will, no collateral attack on the probate being allowed, and only a direct attack in the manner and within the time provided by law.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 904-910; Dec. Dig. § 421.* 13 Va.-W. Va. Enc. Dig. 764.]

2. Wills (§ 601*)—Construction—Instructions—Estate Created—Fee Simple.—A will of a wife, devising to her husband all her real estate, "to have and to hold to himself in his own individual right with full power to control the same as he may elect or to sell or convey the same to any person or persons whatever, and to use the proceeds thereof as he may elect during his natural life," with remainder to others in case he did not dispose of the property during his life, creates a fee-simple estate in the husband, the limitations over being void on the ground of repugnance and uncertainty.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1340-1350, 1608; Dec. Dig. § 601.* 13 Va.-W. Va. Enc. Dig. 824.]

3. Appeal and Error (§ 232*)—Matters Reviewable—Exceptions Preserved.—Where a copy of a will was introduced in evidence over the sole objection that it was inadmissible evidence, it cannot be urged on appeal that the copy was not a true copy, since the ground of objection in the court below would mislead the court and counsel, and is not notice of any alleged defect in the certification of the probate of the will.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1351, 1368, 1426, 1430, 1631; Dec. Dig. § 232.* 1 Va.-W. Va. Enc. Dig. 547.]

Appeal from Circuit Court, Botetourt County.

Action by one Avant and others against one Cook, as executor of the estate of Thomas Gross, and others. From a judgment for defendants, plaintiffs appealed. Affirmed.

Staples & Cocke and *H. B. Gregory*, all of Roanoke, for appellants.

Benjamin Haden, and *G. S. Lunsford*, both of Fincastle, for appellees.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.